In the High Court of Judicature at Madras

Dated:20.1.2006

Coram:

The Hon'ble Mr. Justice K.MOHAN RAM

A.S.No.155 of 1992

Messrs. Ganesh Industries
by its Sole Proprietor
Padikkas .. Appellant/Plaintiff

vs.

1. M/s. Bharath Rubber Company,
   by its Partner SV.T.Sivaraman

2. S.V.T.Sivaraman

3. SV.T.Sathappan .. Respondents/Defendants

Prayer: Appeal against the Decree and Judgment dated 5.12.1991 made in O.S.No.487 of 1987 on the file of the Principal Subordinate Judge of Coimbatore.

For appellant : Mr.V.Monohar

For respondents : Mr.A.R.Nixon

J U D G M E N T

The unsuccessful plaintiff in O.S.No.487 of 1987 on the file of the Principal Subordinate Judge, Coimbatore is the appellant in the appeal. For the sake of convenience, the parties are hereinafter referred to as per their array in the suit.

2. The suit was filed for directing the defendants to execute a sale deed in favour of the plaintiff, in respect of suit property at his cost and on his paying the balance sale price of Rs.25,000/-.

3. The trial Court dismissed the suit by judgment and decree dated 5.12.1991. Aggrieved by that, the plaintiff has filed the present appeal. The brief facts of the case as pleaded by the plaintiff are as follows:

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The suit schedule property was originally owned by Kannappan @ K.S.Shanmugham and the first defendant entered into an agreement with him to purchase the said property in the year 1979. Thereafter, the first defendant represented by the second defendant agreed to sell the suit property to the plaintiff and in pursuance of the agreement, received a sum of Rs.5,001/- towards a part of the sale price on 16.7.1979 by cheque No.058376 issued by the plaintiff in favour of the first defendant on the Indian Bank, Coimbatore. It has been agreed between the parties that the defendants shall sell the property for a sum of Rs.30,001/- to the plaintiff and that the sale should be effected after the first defendant purchased the property from the aforesaid Kannappan @ shanmugham as per the agreement of sale. Time is not the essence of the contract.

4. On 11.2.1980, Kannappan @ Shanmugham executed a registered sale deed in receipt of the suit property for a sum of Rs.14,400/- in favour of the second defendant representing the first defendant firm. After that the second defendant gave a copy of the original sale deed to the plaintiff in token of his promise to execute a sale deed in his favour as agreed to on 16.7.1979. Though the defendants have agreed to convey the property to the plaintiff, they have not executed the sale deed, inspite of the fact that there was an agreement with the plaintiff. The plaintiff approached the second defendant on several occasions and pressed him to execute the sale deed in his favour at his cost but, the defendants have been postponing the execution. The plaintiff therefore sent a notice dated 3.9.1986 to the second defendant representing the first defendant firm. There was no reply. Again a notice dated 17.5.1987 was issued to the second defendant. Though, the second defendant received that notice on 19.5.1987, there was no reply.

5. In paragraph 6 of the plaint, it is stated that the cause of action arose on 16.7.1979 when the plaintiff agreed to purchase the suit property and paid an advance of Rs.5,001/- to the second defendant representing the first defendant firm; on 12.2.1980 when the suit property was purchased by the second defendant and a copy of the sale deed was handed over to the plaintiff, on 3.9.1986 when the plaintiff sent a notice to the second defendant representing the first defendants firm; on 17.5.1987 when the plaintiff sent another notice to the second respondent . Subsequently, the plaintiff has not stated as to when the defendants refused to execute the sale deed. On the above said pleadings, the suit has been filed for specific performance.

6. The suit was contested by the defendants, by filing a written statement through the second defendant which has been adopted by defendants 1 and 3. In the written statement, it is stated as follows:

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(i) It is not correct to state that M/s. Bharat Rubber Company can be represented by the second defendant. The partnership firm had been reconstituted and the second defendant was not a partner of the first defendant firm on the date of filing of the suit. The description of property is also misleading. The plaintiff claims relief only in respect of an extent of 45 cents which has been purchased by the second defendant under a registered sale deed dated 11.2.1980 for 14,400/- and it does not belong to the first defendant firm. Therefore the letter dated 16.7.1979 relied upon by the plaintiff cannot have anything to do with the suit property. So far as the remaining extent of 70 cents is concerned, it does not form part of the suit property as per description of property in the plaint schedule. The said extent of 70 cents has been purchased, on 11.2.1980 for Rs.22,400/-. No agreement can be entered into by the first defendant firm in respect of the property owned by the second defendant. The suit was hopelessly barred by limitation. The averment that time is not the essence of the contract is not correct.

(ii). The letter (described as receipt) relied upon by the plaintiff does not represent a concluded contract. The fact is that the plaintiff made a representation that the suit property and another extent should be purchased. Later on when the transaction was nearing completion, the plaintiff backed out as he was concerned about a land acquisition proposal, the plaintiff proposed to buy a part of the property to be purchased by the first defendant but no extent was finalised and no sale price was fixed. The plaintiff simply issued a cheque for Rs.5,001/- stating that the other details can be finalised later. However the plaintiff did not come forward to purchase any part of the total extent of 1 acre and 15 cents which included the suit property. Hence, the second and first defendants proceeded to purchase properties. There is no concluded contract for buying any property at that time. When the property was purchased by the first defendant and second defendant the plaintiff did not show any interest and therefore the proposal on the part of the plaintiff did not materialise. In other words, the proposal did not fructify into a contract.

(iii). The alleged consideration of Rs.30,001/- is artificial and imaginary. The sale price was not mentioned in the notice dated 3.9.1986. But it was mentioned only in the legal notice dated 17.5.1987. The suit document No.1 is void for uncertainty as it does not contain the description of the property. The plaintiff is silent about the period of contract and there cannot be any contract without fixing the sale price and the extent of the property. When these material averments are absent, it should be presumed that there is no concluded contract at all. The plaintiff has filed the speculative suit on account of the recent hike in price of the property. The second defendant has stated that he ignored the suit notice since the proposal reflected in document No.1 concerns only the firm. On

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the above said pleadings, the defendants prayed for dismissal of the suit.

7. On the above said pleadings, the trial Court framed the following issues viz:-

1. Whether the first defendant has got right to sell the suit property?
2. Whether the second defendant is the owner of the suit property?
3. Whether the suit is barred by limitation?
4. Whether there was concluded contract between the plaintiff and the defendants?
5. Whether the suit agreement is vitiated for being vague?
6. Whether the plaintiff was ready to perform his part of the alleged contract entered between the plaintiff and the defendants?
7. Whether the plaintiff is entitled for a decree for specific performance?
8. Whether the suit is not maintainable for want of cause of action?
9. What reliefs the parties are entitled to?

8. During the trial, the plaintiff got himself examined as PW.1 and marked Exs.A1 to A20. On the side of the defendants, the second defendant was examined as DW.1 and Exs.B1 to B3 were marked. On a careful consideration of the oral and documentary evidence adduced in the case, the trial Court came to the conclusion that there was no concluded contract between the plaintiff and the second defendant, that the property description is wrong, that the first defendant cannot enter into any agreement in respect of the suit property, as the second defendant is the only owner of the suit property and the agreement pleaded by the plaintiff is vague and the plaintiff was inactive from 1979 to 1987 and he was not ready and willing to perform his part of the contract. On the aforesaid pleadings, the trial Court dismissed the suit. Aggrieved by that, the plaintiff has filed the above appeal.

9. Mr.V.Manohar, learned counsel for the appellant submitted that Ex.A.3/receipt and the admitted fact that the original sale deed under Ex.A.4 dated 11.2.1980 executed by K.N.Shanmugham, in favour of the second defendant was handed over to the plaintiff were not considered by the Trial Court in their proper perspective. He also submitted that certain answers in the deposition of DW.1 will also establish that there was a concluded contract between the plaintiff and the defendants.

10. Per contra, the learned counsel appearing for the respondents Mr.A.R.Nixon, reiterated the contentions raised by the defendants in the trial Court, and submitted that the trial Court has considered all the relevant evidence on record and has correctly concluded that there was no concluded contract. He therefore prayed for dismissal of the appeal.

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11. The main issue to be decided in the appeal is whether there was a concluded contract between the plaintiff and the defendants. Only when the Court comes to the conclusion that there was a concluded contract between the plaintiff and the defendants, the other issues would arise for consideration.

12. Ex.A.3 dated 16.7.1979 is the crucial document relied upon by the plaintiff to show that there was a concluded contract. Ex.A.3, reads as follows:

"நாங்கள் ஆவணி மாதம் கிரையம் செய்யப் போகும் கவுண்டன்பாளையம் கிராமம் இடத்தில் சப் டிவிஷன் செய்து ஆ.ள.முயநேளா/ஜனேரளவநைள/க்கு கிரையம் செய்து கொள்வதாக விலை பேசி அதற்கு அட்வான்சாக இந்தியன் பாங்க் எண். 058376 நிர் செக் மூலம் ரூ.5001/- (ரூபாய் ஐந்தாயிரத்தி ஒன்று மட்டும்) பெற்றுக் கொண்டோம். பாக்கி ரூபாயை கிரையம் செய்யும் பொழுது பெற்றுக் கொள்கிறோம்."

13. A perusal of Ex.A.3 shows that there is no description of the property to be purchased. There is no mention about the sale price and the period within which it should be completed and there is no default clause. Further, Ex.A.3 shows that it has been issued by the first defendant/partnership firm signed by its partner the second defendant. In this connection, it is useful to refer to Ex.A.1 notice dated 3.9.1986. After referring to the alleged agreement, it is stated therein that the second defendant agreed to execute the sale deed after getting the sale deed from K.N.Shanmugham on 11.2.1980, but he has not cared to execute a sale deed in favour of the plaintiff. The plaintiff has stated in Ex.A.1 that he was ready and willing to perform his part of the contract by paying the balance amount and get the sale deed. The plaintiff had called upon the second defendant to receive the balance sale price and to execute the sale deed within three days. In Ex.A.1 the description of the property is also mentioned.

14. The learned counsel for the appellant submits that this notice is addressed to the first defendant firm. But, I am unable to agree with this submission, since the notice is addressed to Thiru.SV.T.Sivaraman, Son of SV.Thirunavukkarasu Chettiar, Partner, Bharat Rubber Company, No.105, N.S.R.Road, Coimbatore-641 011. It would clearly show that the notice has been addressed to Sivaraman in his individual capacity and he has been described as the partner of Bharat Company. If the notice was addressed to the firm, then it would have been addressed to the firm namely, M/s. Bharat Company represented by its partner. In the description of the property, the property is described as an extent of 45 cents with right of way. In the notice also, the price agreed for the purchase of the property has not been mentioned. No time limit has been mentioned. If really there was a concluded contract between the plaintiff and the first defendant, all these details would have been stated atleast in the notice. The specific case of the plaintiff in the plaint is that the first defendant entered into an agreement to purchase

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the suit schedule property from K.N.Shanmugham, in the year 1979 and thereafter, the first defendant represented by the second defendant agreed to sell the suit property to the plaintiff. It is his further case that it has been agreed between the parties that the defendants shall sell the property for a sum of Rs.30,001/- to the plaintiff. He has further stated that the sale should be effected after the first defendant purchased the property from the aforesaid Kannappan @ Shanmugham as per the agreement. So, the averments will clearly show that the plaintiff wants to enforce the sale agreement said to have been entered into by him with the first defendant in respect of the property to be purchased by the first defendant from the said Kannappan @ Shanmugham. But, a perusal of the description of the property in the schedule will show that the plaintiff is seeking a direction for specific performance, in respect of an extent of 45 cents in Survey No.101/1 Kavundampalaym Village, Coimbatore Taluk, which has not been purchased by the first defendant, but purchased by the second defendant.

15. The above said aspects will show that not only Ex.A.3 is vague, the notices Ex.A.1 and A.2, but also the plaint averments are vague. The plaintiff himself was not clear as to in respect of what property he was seeking relief. The agreement is said to have been entered into with the first defendant and suit has been filed seeking a decree as against the defendants, but the relief is sought for in respect of property owned by the second defendant but not the first defendant. The above said fact clearly shows that the plaintiff has not established any concluded contract between the plaintiff and the defendants.

16. Section 29 of the Indian Contract Act 1872 reads as follows:

> Agreements void for uncertainty
>
> "Agreements, the meaning of which is not certain, or capable of being made certain, are void."

If the contents of Ex.A.3 are considered in the light of the aforesaid Provision of law it is clear that there was no concluded contract between the parties. Ex.A.3 is not in respect of any identifiable property, and no identifiable property is agreed to be sold for any agreed price. There is also no time fixed for performance of the contract.

17. The trial Court has considered the evidence of DW.1 and Ex.A.3. DW.1 has admitted that he gave Ex.A.3 on behalf of the first defendant firm and though it is mentioned in Ex.A.3 that the sale deed should be completed after sub division D.W.1 has stated that there was no talk about sub division. P.W.1 is also unable to give the present value of the suit property. Considering the vagueness of Ex.A.3 and the non-mention of the price and extent of property and other details in the notice, the

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trial Court has held that there was no concluded contract between the plaintiff and the defendants.

18. The counsel for the appellant invited my attention to the deposition of DW.1 wherein he stated as follows:

> "சப் டிவிஷின் செய்து கிரயம் பேசி செய்யனும் என்ற அர்த்தத்தில் எழுதிக் தந்தது சப் டிவிஷின் செய்து கிரயம் பேசனும் என ஒப்பந்தம்."

This will show that the parties agreed to enter into an agreement of sale after effecting sub division of the property. But there is no evidence to show that there was any sub division after purchase by the defendants and subsequent to that there was any agreement to purchase the property. There is no evidence to know that there was any concluded contract between the plaintiff and the defendants.

19. In view of the aforesaid reasons, I do not find anything wrong with the conclusion arrived at by the trial Court. The reasons given by the trial Court are based on the oral and documentary evidence on record and I do not find any reason to interfere with the same. The judgment and decree of the trial court is confirmed and accordingly the appeal is dismissed. No costs.
sgl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Principal Subordinate Judge
Coimbatore (with records)

2. The Record Keeper, VR Section
High Court, Madras.

+ one cc to Mr. AR. NIXER, Advocate sr no . 2130

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